

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.619 OF 2005

Kallappa Bhujappa Surwanshi & Anr. .. Appellants.
Vs.
Bapu Bhujappa Surwanshi & Ors. .. Respondents.

Mr.A.A.Kumbhakoni for the appellants.
Mr.Manoj M.Kadam i/b Mr.D.V.Sutar for respondent no.1.

CORAM : D.B.BHOSALE, J.

DATED : 31ST JANUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. This appeal by the original plaintiff is directed against the concurrent findings recorded by the courts below. The plaintiffs filed a suit for injunction restraining the defendants from making any construction on a small open portion of the land which was kept common in the partition between the parties effected on 6.2.1987. It was kept open for common use of the parties. It is alleged that the respondents are trying to construct steps in the said open space and also objected to the projection of their balcony out into his portion of land. I perused the judgments of the courts below and in my opinion both the courts below have appreciated the entire evidence/material on

record in proper perspective. The steps, which were being erected, are admeasuring hardly 3 ft. in length and 1.1/2 ft. in width and they were found necessary by the courts below. In my opinion, construction of steps and balcony do not amount to encroachment, as alleged, over the open space kept for common use of the parties. Both the courts below have rightly dismissed the suit. No substantial question of law is involved in this appeal. Considering that there are concurrent findings recorded by the courts below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure to disturb the findings of fact this appeal deserves to be dismissed. Order accordingly.

(D.B.Bhosale, J.)